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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|-------------------------|---------------------|------------------|
| 10/737,330 | 12/17/2003 | Michael Anthony Zerillo | | 7560 |
| 7590 | 09/08/2005 | | EXAMINER | |
| MICHAEL A. ZERILLO 15821 E. JERICHO DR. FOUNTAIN HILLS, AZ 85268 | | | HAWK, NOAH CHANDLER | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3637 | |

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|--------------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/737,330 | ZERILLO, MICHAEL ANTHONY | |
| | Examiner | Art Unit | |
| | Noah C. Hawk | 3637 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1 is/are rejected.
- 7) Claim(s) 1 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 17 December 2003 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "additional means to disconnect the electricity to the motor" in the switch and the remote control receiver must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the

remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites the limitation "patio umbrella opening and closing means" in lines 7 and 9. There is insufficient antecedent basis for this limitation in the claim. Further, the applicant recites "a switch having two means," but then discloses a third "additional means." The claim should be rewritten to disclose a switch with the total number of means it is meant to have. The applicant recites "a remote control receiver having two means," but then discloses a third "additional means." The claim should be rewritten to disclose a remote control receiver with the total number of means it is meant to have.

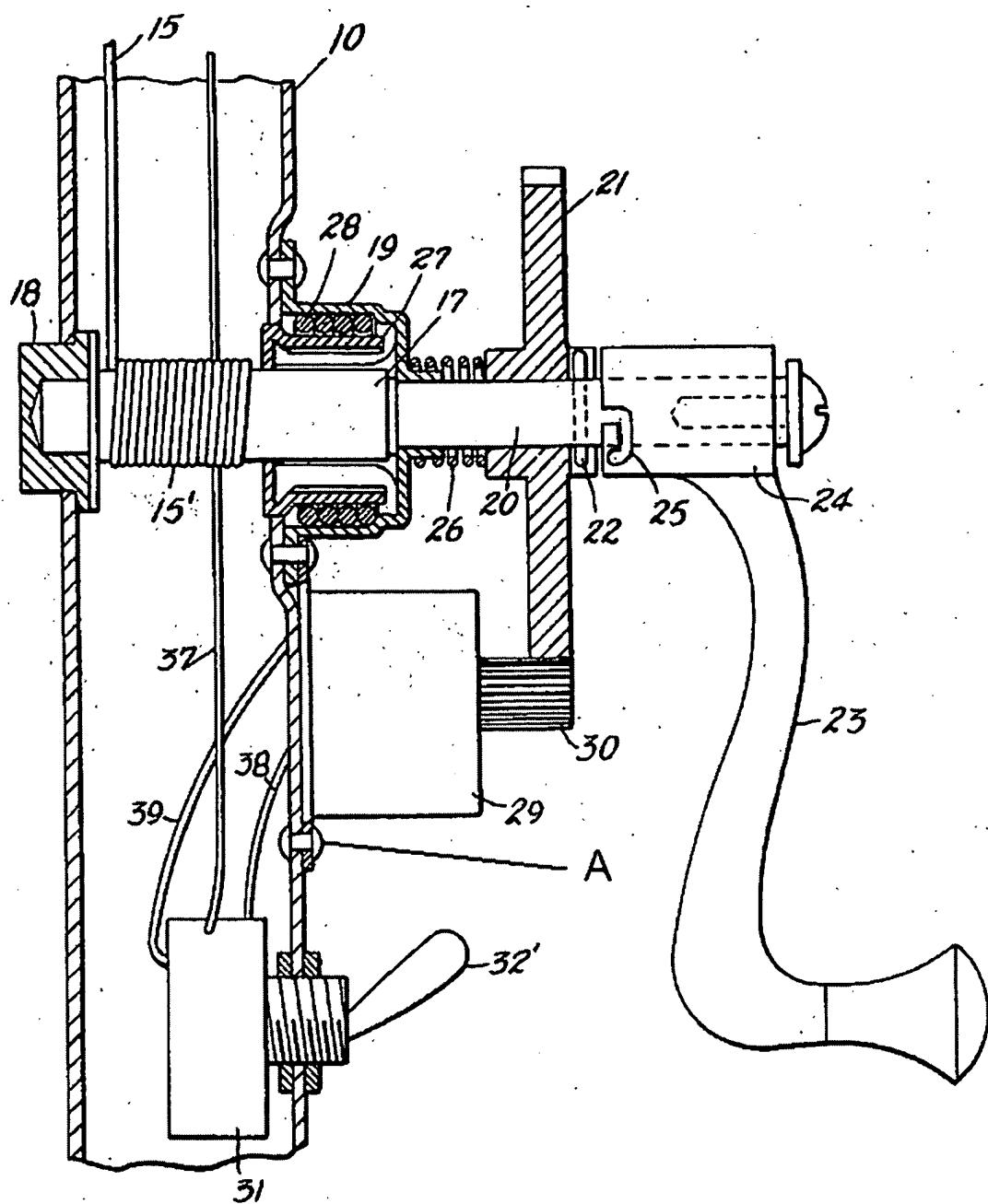
Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lai in US Patent 6182917 in view of Small in US Patent 2960094. Lai discloses an electric opening and closing device for umbrellas, the device comprising a reversible electric motor (21), a reel drivingly engaged with the motor (24) a housing means for the motor and the reel (12), a length of cable (33) affixable at one end to the reel, a means to provide electricity (See Lai, Column 2, lines 14-15), a switch (10) having two means (See Lai, Column 4, lines 12-15) to connect the electricity to the motor, a remote control receiver (11) having two means (See Lai, Column 4, lines 12-15) to connect the electricity to the motor, and a remote control transmitter (See Lai, Column 1, lines 26-28) having means to control the remote control receiver. Lai is silent on which direction the motor turns as related to the switch or remote control receiver, however it would be obvious for the motor to turn in one direction such as clockwise when a controlling means such as a switch or remote receiver is thrown one way and another direction such as counterclockwise when the controlling means is thrown another way and to further be stopped or at rest when the controlling means is in a rest position. Lai

does not disclose that the opposite end of the cable is affixable to the patio umbrella opening and closing means, nor does he disclose a means to affix the housing to the patio umbrella at a location to thereby establish control of the patio umbrella opening and closing means. Small discloses a motor device for an umbrella, the device having a cable (15) affixed at one end to a reel (17), the opposite end of the cable being affixable (See Small, Column 1, lines 50-54) to the patio umbrella opening and closing means (13). Small also discloses a means (A) to affix the housing to the patio umbrella at a location to thereby establish control of the patio umbrella opening and closing means. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Lai by using a cable attached at an opposite end to the patio umbrella opening and closing means and to use a means to attach the housing a location to thereby establish control of the patio umbrella opening and closing means as taught by Small in order to ensure that the motor is in control of the operation of the umbrella and that it is firmly attached at a convenient position to the umbrella.



Small, Figure 2

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Russell, Wu and Small in US Patent 2951492 disclose

umbrella opening and closing devices with cables attached to the umbrella opening and closing means. Wilson, Vivian et al., Kuelbs, Moga and Ma disclose motorized umbrella devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Noah C. Hawk whose telephone number is 571-272-1480. The examiner can normally be reached on M-F 9am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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9/6/05

LANNA MAI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

